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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,703	12/07/2005	Reiner Fischer	CS8689/BCS03-3014	1859
34469 7590 06/10/2009 BAYER CROPSCIENCE LP Patent Department 2 T.W. ALEXANDER DRIVE RESEARCH TRIANGLE PARK, NC 27709			EXAMINER SULLIVAN, DANIELLE D	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			06/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,703

Applicant(s)

FISCHER ET AL.

Examiner

DANIELLE SULLIVAN

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-40 and 61 is/are pending in the application.
- 4a) Of the above claim(s) 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Status of Claims

In a phone interview on March 13, 2008, claims 37-40 were indicated as in condition for allowance. However, upon further consideration of the declaration filed 12/05/2008, claims stand rejected.

Withdrawn rejections

Applicant's amendments and arguments filed 3/18/2009 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below are herein withdrawn.

Claim Rejections - 35 USC § 103

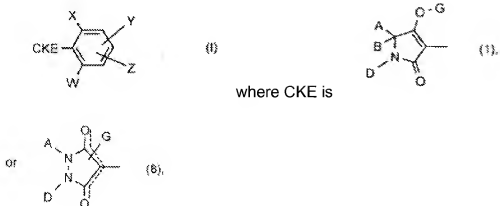
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lieb et al. (US 6,451,843).

Applicant's Invention

Applicant claims a compound of formula (I):



Z represents optionally substituted pyrazolyl or benzpyrazolyl. Preferably, W represents hydrogen, methyl or ethyl; X represents chlorine, methyl or ethyl; Y represents hydrogen and Z represents, in the 4- or 5-position, the group



in which V¹ represents chlorine or methoxy.

Determination of the scope and the content of the prior art (MPEP 2141.01)

Lieb et al. teach an herbicidal/pesticidal compound of formula (I) as where Y is in the 4-position and Z is in the 5-position (abstract; column 2, line 50-67). W and X may be hydrogen and Z may be alkyl, Y may be an optionally substituted heterocyclic group, and CKE is as defined above (column 2, line 62 through column 3, line 40).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Lieb et al. do not teach Y is a optionally substituted pyrazolyl or benzpyrazolyl. Lieb et al. only teaches that Y is a heterocyclic group. However, a pyrazole is a heterocyclic group and is therefore taught by Lieb et al. Lieb et al. do not teach that Z is hydrogen while W is methyl. However, Lieb et al. teach isomers where Z includes methyl and W includes hydrogen.

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

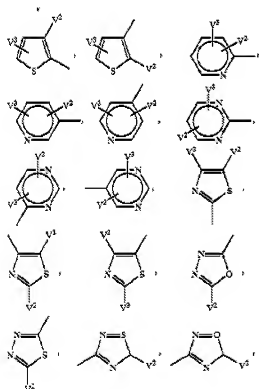
It would have been obvious to one of ordinary skill in the art at the time of the invention in view of Leib et al. to exemplify a compound where the Y heterocyclic group is a pyrazolyl or benzpyrazolyl. One would have been motivated to include a substituted pyrazole because it is a well known heterocyclic in the art that possesses two nitrogen atoms and three carbon atoms.

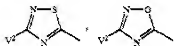
Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention in view of Leib et al. to exemplify a compound where Z and W can isomerize. One would have been motivated to include isomers in the Z and W position because it was decided in In re Norris, 84 USPQ 458, (CCPA 1950), that a novel and useful compound, which is isomeric with compounds of the prior art is not patentable where the new compound is not shown to possess new and unexpected utility. In the instant case, Leib et al. teach that the compounds are utilized for the same purpose, as herbicides and pesticides.

Response to Amendment

The declaration under 37 CFR 1.132 filed 12/05/2008 is insufficient to overcome the rejection of claims 39-40 based upon the teachings of set forth in the last Office action because: Applicant has not shown unexpected results.

The claims require the compound to contain Z that is a pyrazolyl or benzpyrazolyl. The declaration fails to compare the instantly claimed compounds with the closest prior art compound, that is, one in which the corresponding Z in the prior art is selected from one of the following:





(See Lieb et al. on column 29, lines 10-40). The

comparative data only discloses data for a chlorine substituted phenyl group and not a hetaryl.

The claimed invention must be compared with the closest prior art compound. See MPEP 716.02(e). The results must include the results of the test performed on the invention as claimed and the closest prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE SULLIVAN whose telephone number is

(571)270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan
Patent Examiner
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/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616